

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DENNY DEJESUS, 10-B-2030

Plaintiffs,

ANSWER

-VS-

16-CV-6470

CORRECTIONS OFFICER MALLOY

Defendant.

Defendant, by his attorney Letitia James, Attorney General of the State of New York, Hillel Deutsch, Assistant Attorney General, of counsel, as and for an Answer to the Second Amended Complaint filed in the above matter:

1. Denies the allegations of the Complaint which allege in any manner that their actions resulted in a deprivation of the Plaintiffs' constitutional rights.

2. Denies the commission or awareness of, or responsibility for, any acts of omission or commission relative to Plaintiffs' allegations constituting a violation of any rule, regulation, directive, policy, or statute of the State of New York, or the United States, or the Constitution of either, which would confer jurisdiction upon this Court pursuant to 28 U.S.C. §§1331 and 1343.

3. Denies Plaintiff has alleged facts, actions, occurrences, or omissions sufficient to establish a claim for equitable or monetary relief, or a cause of action against him pursuant to 42 U.S.C. §1983.

4. Denies the allegations of paragraph 7 of the Second Amended Complaint.

5. Has insufficient information to admit or deny the allegations of paragraphs 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of the Second Amended Complaint.

6. States that the paragraphs 1 and 2 of the Second Amended Complaint contain legal conclusions to which no response is needed.

7. Denies each and every other allegation not heretofore admitted, denied, or otherwise controverted.

**AS AND FOR A FIRST, SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES:**

8. The Complaint fails, in whole or in part, to state a claim upon which relief can be granted against it.

**AS AND FOR A SECOND, SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES:**

9. This action is barred, in whole or in part, by collateral estoppel or res judicata.

**AS AND FOR A THIRD, SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES:**

10. The Defendant, at all times relevant hereto, acted without malice and under the reasonable belief that his actions were proper and in accordance with existing law and did not violate any of the Plaintiffs' rights.

11. Consequently, the Defendant is entitled to qualified immunity.

**AS AND FOR A FOURTH, SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES:**

12. That this action is barred, in whole or in part, by the Eleventh Amendment to the United States Constitution.

**AS AND FOR A FIFTH, SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES:**

13. Plaintiff has failed to exhaust administrative remedies as to some or all of the allegation of the Complaint.

**AS AND FOR A SIXTH, SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES:**

14. The doctrine of *respondeat superior* does not apply in actions brought pursuant to 42 U.S.C. §1983, and bars relief to the Plaintiff.

**AS AND FOR A SEVENTH, SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES:**

15. Plaintiff has failed to request any appropriate or cognizable form of relief.

WHEREFORE, Defendant prays that judgment be entered dismissing the Second Amended Complaint in all respects and that Defendant be awarded reasonable costs and attorneys' fees and for such other and further relief as may be just, proper, and equitable.

Dated: April 11, 2019
Rochester, New York

LETITIA JAMES
Attorney General of the State of New York
Attorney for Served Defendants

s/ Hillel Deutsch
HILLEL DEUTSCH
Assistant Attorney General of Counsel
NYS Office of the Attorney General
144 Exchange Boulevard, Suite 200
Rochester, New York 14614
Telephone: (585) 546-7430
hillel.deutsch@ag.ny.gov

CERTIFICATE OF SERVICE

I certify that on April 11, 2019, I electronically filed the foregoing Answer to Complaint on behalf of Served Defendants with the Clerk of the District Court using CM/ECF system, which sent notification of such filing to the following:

1. n/a

And, I hereby certify that I have mailed, by the United States Postal Service, the document to the following non-CM/ECF participant(s):

1. Denny DeJesus, 10B2030
Southport Correctional Facility
236 Bob Masia Dr
P.O. Box 2000
Pine City, NY 14871-2000

LETITIA JAMES
Attorney General of the State of New York
Attorney for Served Defendants

s/ Hillel Deutsch
HILLEL DEUTSCH
Assistant Attorney General of Counsel
NYS Office of the Attorney General
144 Exchange Boulevard, Suite 200
Rochester, New York 14614
Telephone: (585) 546-7430
hillel.deutsch@ag.ny.gov